

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 260/2022

PARULBEN NAVNATH CHOTHANI TRADING AS SHIV
ENTERPRISE & ORS. Defendants
Through: Ms. Sneha Jain, Advocate for Amazon
Seller Services (M:8017571175)

ORDER
25.04.2022

6. This is an application seeking leave to file additional documents under

the Commercial Courts Act, 2015. The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015.

7. ***I.A. 6246/2022*** is disposed of.

I.A. 6245/2022 (u/O XI Rule 1(4)) (for exemption from filing original documents)

8. This is an application seeking exemption from filing original and clear copies of documents. Recording the Plaintiff's undertaking that the inspection of original documents shall be given, if demanded, and that the original documents shall be filed prior to the stage of admission/denial, the exemption is allowed.

9. ***I.A. 6245/2022*** is disposed of.

I.A. 6244/2022 (u/S 12A)

10. This is an application seeking exemption from instituting pre-litigation mediation. In view of the orders passed in ***CS (COMM) 132/2022*** titled ***Upgrad Education v. Intellipaat Software***, the application is allowed and ***I.A. 6244/2022*** is disposed of.

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11. Let the plaint be registered as a suit.

12. Issue summons to the Defendants through all modes upon filing of Process Fee.

13. The summons to the Defendants shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

14. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

15. List before the Joint Registrar for marking of exhibits on 18th July, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

16. List before Court on 30th August, 2022.

I.A. 6243/2022 (for stay)

17. The Plaintiff - Sirona Hygiene Private Limited has filed the present suit impleading M/s Parulben Navnath Chothani, trading as Shiv Enterprise, as Defendant No.1. Three e-commerce websites: Snapdeal, Meesho and Amazon, through their companies have been arrayed as Defendant No.2, 3, and 4 respectively. Defendant No.5 is a John Doe defendant.

18. The case of the Plaintiff is that it is engaged in the business of designing, production, manufacture, marketing and sale of various toiletries, personal care products, intimate hygiene products which focus on feminine hygiene and health. Some of the products which have been invented and introduced by the Plaintiff are:

“a. SIRONA Feminine Pain Relief Patches- India's 1st herbal pain patches for menstrual cramps.

b. SIRONA Oxo- Degradable Disposal Bags- India's 1st sanitary disposal bags for clean & hygienic disposal of sanitary products.

- c. *SIRONA Menstrual Cups, Tampons and Panty Liners.*
- d. *SIRONA Intimate Wash (pH balanced - Natural - No Chemical Actives)*
- e. *SIRONA Therapeutic Body Wash.*

19. The Plaintiff is stated to have received a large number of awards for its inventions. It adopted the mark “SIRONA” in the year 2016 and this mark has now been registered in favour of the Plaintiff both in Class 10 and Class 3. The details of the said registration are as under:

Trade Mark	TM No.	User detail	Class	Status
	4337628	19.08.2019	10	Registered
SIRONA	3683557	31.05.2016	03	Registered

20. The grievance of the Plaintiff in the present case is that look-alike and counterfeit products are being sold on the internet through the portal www.snapdeal.com, www.meesho.com and www.amazon.in. by Defendant No.1 and other unknown Defendants. Some of the products which are being sold are under the identical mark “SIRONA” with almost identical getup, containers, packaging, etc. In some of the products, slight variation of the mark, by using the brand “SIROMA” has been made.

21. Ms. Hasan, Id. Counsel, submits that a perusal of the products being offered on the internet by the Defendant platforms, shows that these are nothing but knock offs and infringing products. In several of the listings on the portals, the name of the seller is also not clear. She submits that Defendant No.1 is one identified seller on the platform www.meesho.com- Defendant

No.3. Defendant No.1 has also filed an application bearing no. 5326858 for the registration of the mark “SIROMA” on a ‘proposed to be used’ basis on 12th February, 2022. Ld. Counsel for the Plaintiff submits that the adoption of the mark “SIROMA” by Defendant No.1 is recent and she submits that Defendant No.1 is liable to be enjoined.

22. This Court has noticed in a number of cases that e-commerce platforms are being used for selling counterfeit and knockoff products. The present is a classic example of the same. The products of the Plaintiff are feminine hygiene products where the highest quality is expected to be adhered to. Under such circumstances the sale of counterfeit “SIRONA” or “SIROMA” branded products in identical containers, color combination would be nothing but a complete rip off for the consumers who may be purchasing these products under the impression that they originate from the Plaintiff. The Court has perused various website printouts from Meesho.com, Snapdeal.com and Amazon.in. It is noticed by the Court that the Plaintiff’s products and the counterfeit “SIRONA” and “SIROMA” products are being promoted, offered for sale on the said platforms side by side. One such screenshot from the website Amazon.in is set out below:



23. A perusal of the above screenshot would show that there is complete confusion between “SIRONA” and “SIROMA” products. The sale of such counterfeit/knock-off products has become prolific on the internet and needs to be arrested in order to protect the owners of the trade marks as also the customers who purchase these products. Accordingly, the Plaintiff has made out a *prima facie* case for grant of an *ex parte ad interim* injunction. The balance of convenience is also in the favour of the Plaintiff, irreparable injury would be caused if the counterfeit and knockoff products are permitted to be sold in this manner, especially, when they are related to feminine hygiene. The Plaintiff’s brand name is also likely to be diluted and tarnished if the sale of counterfeit products under the mark “SIRONA” and “SIROMA” is permitted to be carried on. It is also in the interest of general public that the said products are injuncted immediately.

24. Accordingly, in the facts and circumstances of this case, the following directions are issued:

1. Defendant No.1 is restrained from manufacturing, selling advertising, distributing any feminine hygiene products or any other cognate or allied goods under the mark “SIRONA” or “SIROMA” or any mark that is identical or deceptively similar to Plaintiff’s mark “SIRONA”. The Defendant No.1 is also restrained from using containers and packaging which are a substantial imitation of the Plaintiff’s products.
2. Defendant Nos. 2, 3, and 4, which run the e-commerce platforms www.snapdeal.com, www.meesho.com, www.amazon.in respectively, shall immediately take down

all the products which are bearing the mark “SIROMA” or SIRONA, not belonging to the Plaintiff, within 36 hours after receiving this order. If after 36 hours any further infringing products under the mark “SIROMA” are available on these platforms, the Plaintiff shall intimate the same along with URLs, to these platforms which shall be taken down within 36 hours from the intimation. If there are any residual products which are not taken down, the Plaintiff is permitted to approach the Court.

3. The Defendant Nos.2,3,and 4 shall also give a complete list of all the sellers of “SIRONA” and “SIROMA” feminine hygiene products or any cognate or allied goods being sold on their platforms to the Plaintiff. Upon receiving this order, the details of the said sellers along with their addresses, contact details, email addresses, quantum of sales etc. shall be provided to the Plaintiff within 1 week. Upon the said details being received, the Plaintiff is permitted to implead them in the present suit as Defendants.

25. A copy of this order shall also be given to Ms. Sneha Jain, Id. Counsel who regularly appears for Defendant No.4-Amazon Sellers Services Private Limited, before this Court.

26. The Compliance of Order XXXIX Rule 3 shall be made within 3 days by email.

27. It is made clear that if there is any non-compliance by any of the platforms, stringent action would be liable to be taken against them considering the nature of these products.

28. *Dasti.*
29. List before the Joint Registrar on 18th July, 2022.
30. List before the Court on 30th August, 2022.

PRATHIBA M. SINGH, J.

APRIL 25, 2022/aman/SK